UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/NGO/27
4 February 1992

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Agenda item 10 (d)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Written statement submitted by the World Confederation of Labour and the World Federation of United Nations Associations, non-governmental organizations in consultative status (category I); by the American Association of Jurists, the Arab Organizations for Human Rights, the Baha'i International Community, Defence for Children International, the Latin American Federation of Relatives of Disappeared Detainees (FEDEFAM), the Friends World Committee for Consultation, Human Rights Advocates, the International Association of Democratic Lawyers, the International Association of Penal Law, the International Commission of Jurists, the International Council of Jewish Women, the International Fellowship of Reconciliation, the International Federation Terre des Hommes, the International League for the Rights and Liberation of Peoples, the International Indian Treaty Council, the International Movement for Fraternal Union among Races and Peoples, Pax Christi International, and the World Association for World Federation, non-governmental organizations in consultative status (category II), and by Centre Europe - Tiers Monde, the International Federation of Acat, and the World Organization against Torture, non-governmental organizations on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

GE.92-10575/2981H

[3 February 1992]

Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The Government of Costa Rica submitted last year a draft optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1991/66). This draft was drawn up by a group of international experts, in November 1990, who undertook to revise the draft optional protocol, proposed also by Costa Rica in 1980, adapting it to the present situation. The signatory NGOs feel that it is time for the Commission on Human Rights to examine the proposal of Costa Rica for at least the six following reasons.

1. First, quite simply because the idea of a system of preventing torture through visits to places of detention is an idea to which nobody can reasonably object:

- A body of independent experts would have the right to visit any place of detention and - in absolute confidentiality - submit any conclusions or recommendations it deemed fit to the authorities concerned;

- The rule of confidentiality would not be broken by the visiting body unless the authorities, after the visit, had shown a total lack of cooperation in the implementation of the improvements advised.

Honestly, who - in a forum such as the Commission on Human Rights - could say that such an idea does not deserve to be examined?

2. Second, this draft optional protocol fits perfectly within the present concerns of the United Nations in the field of Human Rights. The establishment of fact-finding procedures can be regarded as one of the most valuable developments in recent years of human rights activities within the United Nations. Legal standards - and the Convention against Torture is far from being the only instrument to prohibit torture - are unfortunately not sufficient in themselves to eradicate this scourge. Future solutions therefore would seem to lie in the fact-finding exercise. That is at least the opinion of the Special Rapporteur on torture, Mr. Peter Kooijmans, who emphasized in his 1991 report that a system of visits to places of detention would represent the final stone in the edifice which the United Nations has built for the protection against torture.

3. There are certainly other fact-finding mechanisms in the field of human rights, but they are generally used only after serious violations have been committed or are suspected to have been committed. Therefore, the third reason to start discussing the draft optional protocol is that, if compared to most of the other mechanisms, it would offer the advantages of being essentially preventive and to bring about a climate of confidence. Its advantages are in particular that:

(a) Under this system, preventive visits - unlike those at present carried out, mainly by the ICRC - would take place without having to receive authorization. As an optional protocol, i.e. an instrument which would be binding only for the States parties, it would allow visits without delay, and obviously the time element is crucial in the protection against torture;

(b) These visits would be made regularly, automatically, without any denunciation being made and without any State feeling under suspicion of practising torture or ill-treatment because it would be asked for permission to meet some of the detainees or visit its places of detention;

(c) It will be remembered that in the early days of the entry into force of the International Covenant on Civil and Political Rights, Governments which had to submit reports on how they were implementing that Covenant were apprehensive about being "condemned" by the Human Rights Committee. Today, the large majority of States regularly submit reports to the Committee and there is a real exchange, a real dialogue, between government representatives and experts, and rather than condemnation, States find advice, suggestions and encouragement forthcoming in this procedure. We therefore believe that if government representatives have been able to establish such a useful dialogue with United Nations bodies, they can have a better dialogue with a body responsible for a preventive mandate. In addition, this dialogue would not be only with the Government but also with various authorities responsible for detention (e.g. prison governors).

4. The fourth reason to examine this proposal is that it corresponds to the true interests of the States. Many Governments sincerely wish to improve the treatment of persons detained but, despite their goodwill, do not always manage to monitor what happens to them. We believe that the mechanism of preventive visits proposed by the draft optional protocol would be welcome by those Governments - at any event to the extent that this may be done discreetly and in so far as these same Governments are not publicly condemned.

5. The fifth good reason to examine this draft optional protocol is that it complements the efforts made, in particular by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the Committee against Torture and the Special Rapporteur, to guarantee human rights in situations of exception. It is well known that most of the legal guarantees, such as habeas corpus and amparo, work well in normal circumstances, but that they tend not to be respected as soon as a state of emergency is proclaimed. But the ban on torture is non-derogable and the implementation of that right must be guaranteed in any circumstance. It is interesting to note that there is a provision in the draft which would offer the possibility for the body in charge of the visits of demanding that the person being held should be produced so as to ascertain that the individual was alive and decently treated, even though the place of detention was not officially registered as such. Thus, the draft protocol would also fit within the current efforts of the United Nations to combat enforced disappearances. It would by no means rival other instruments but would complement them.

6. Sixth, while it is commonly agreed today, that the stage of establishing rights may not be quite over, it is now imperative to devote all our efforts to the most effective possible implementation of such rights.

This will be one of the aspects to be discussed at the World Conference on Human Rights. That is precisely what is dealt with in this draft optional protocol. Therefore, the examination of the protocol has come at absolutely the right time.

2. It is not our intention to discuss here in detail the provisions of the draft in question. Should a Sub-Committee of the Committee against Torture be created? How would the system be financed? What would be the relations with other existing systems of visits? All that should be examined closely. We know that this is only a draft and that this draft has to be improved upon. Our request to the Commission on Human Rights now is to acknowledge the interest of a preventive mechanism, consisting of visits to places of detention and based on cooperation with the States concerned. The signatory NGOs therefore call upon the Commission on Human Rights to adopt a resolution to establish an open-ended working group so that this patient work can begin. Then, and only then, will it be time to argue and discuss the various provisions of the draft.